

Service Date: December 22, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF the	)	UTILITY DIVISION
Petition of Blackfoot Telephone Cooperative,	)	
Inc. for Arbitration of Contract Negotiations	)	DOCKET NO. D99.4.112
With Ronan Telephone Company	)	
Pursuant to 47 U.S.C. § 252	)	ORDER NO. 6218
	)	
IN THE MATTER OF the	)	
Petition of Montana Wireless, Inc. for	)	DOCKET NO. D99.4.113
Arbitration of Contract Negotiations	)	
With Ronan Telephone Company	)	ORDER NO. 6219
Pursuant to 47 U.S.C. § 252	)	

**PROCEDURAL ORDER**

**Background**

On April 28, 1999 Blackfoot Telephone Cooperative, Inc. (Blackfoot) and Montana Wireless, Inc. (MWI) filed petitions for arbitration of contract negotiations with Ronan Telephone Company (Ronan) pursuant to 47 U.S.C. § 252. One day prior, on April 27, 1999 Ronan filed a petition, pursuant to 47 U.S.C. § 251(f)(2), for suspension of the application of the provisions of 47 U.S.C. § 251(b) to Ronan, and alternate remedies. Docket No. D99.4.111.

On May 27, 1999 both Blackfoot and MWI filed a "Stipulation Staying Arbitration" with Ronan, agreeing that the arbitration petitions be stayed pending a final Commission order on the Ronan petition in Docket No. D99.4.111. The parties to the stipulations agreed that the Montana Public Service Commission (Commission) would have 125 days from a final order on the Ronan petition ("final order" as defined in the stipulations) to act on the arbitration petitions if action were necessary. The Commission approved the stipulations on June 2, 1999, staying further process in the arbitration dockets pending final Commission action on the Ronan petition. Notice of Commission Action, Docket No. D99.4.112 and D99.4.113, June 4, 1999.

On November 3, 1999 the Commission issued Order No. 6174c in Docket No. D99.4.111, which contained a conditional denial of the Ronan petition, allowed Ronan an opportunity to present additional argument and evidence pursuant to a supplemental procedural

schedule, and indicated an expectation that the arbitration proceedings would commence immediately. Order No. 6174, p. 19. Ronan and MWI both filed motions for reconsideration of Order No. 6174c. On December 6, 1999 the Commission voted to deny reconsideration and directed its staff to prepare a procedural order and schedule in the arbitration dockets. Notice of Commission Action, Docket No. D99.4.111, December 8, 1999.

Staff has met with the parties to the arbitration dockets and, pursuant to delegated authority, issues this procedural order and establishes this schedule.<sup>1</sup>

The Commission considers that the 125 days in which it must act on the arbitrations will begin the day following the issuance of an order on reconsideration of Order No. 6174c, Docket No. D99.4.111. The Commission anticipates that an order on reconsideration will issue the week of December 20, 1999. The Commission notes also that there are two arbitration petitions and two docket numbers, but that they share many issues and will share a common procedural schedule. The Commission directs the parties to make it clear when issues in the Dockets diverge and need to be addressed separately.

#### Intervention

1. In this order the term "parties" includes the petitioners Blackfoot and MWI, Ronan and the Montana Consumer Counsel (MCC). Individuals or entities are not parties unless they have been granted intervention by the Commission.

2. The Commission granted intervention to MCC on June 28, 1999.

#### Service and Filing

3. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and all other documents shall be filed with the Commission and served on all parties and other entities and individuals on the attached service list. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to

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<sup>1</sup> In addition to the usual delegated authority, the Commission appointed Robin McHugh, a Commission attorney, to act as hearings officer for procedural matters in these dockets. Notice of Commission Action, May 21, 1999.

service on the party making the discovery request, the PSC, and parties specifically requesting service of discovery responses.

4. Except for objections to discovery, and responses to objections to discovery, discussed below, filing by means of telephonic facsimile will not suffice for timely filing. Filing and service deadlines are the dates set for filing of the requisite number of paper copies in the offices of the Commission.

5. An original and nine (9) copies of all discovery and other documents, except proprietary documents, must be filed with the PSC. Only one copy of proprietary documents shall be filed -- on yellow paper.

#### Schedule

6. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment □A□ which is attached hereto and incorporated herein by this reference.

#### Discovery

7. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as □data requests□ (informal interrogatories).

8. The Commission directs all parties to prepare data requests according to the following guidelines:

a. Parties must assign their data requests a request number (e.g., Ronan-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through -008 to Ronan, PSC-009 through -016 to MCC, and PSC-017 through 019 to Montana Wireless).

b. All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

c. Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only.

d. Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts

Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass

Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

9. The party receiving the written discovery or data request has three business days from receipt to file any objections it has to the request(s). Responses to objections may be made within two business days of the objections. Objections and responses shall be served by facsimile transmission (fax) or hand delivery upon the Commission and all parties, followed by mail delivery postmarked within the three business days. Parties shall notify each other and the Commission by phone (leaving a message is acceptable) of the imminent arrival of objections and responses by fax. The Commission will dispose of objections by prompt ruling or may schedule argument. Failure to timely object constitutes a waiver of objections.

10. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) by fax within three business days after receipt of such response. Responses to objections may be made within three business days of the objections. Service and notice must be as indicated in paragraph 9. The PSC will dispose of such objection(s) by prompt ruling, or may schedule argument. The PSC will act either to sustain or overrule the objection(s), and, if sustaining, set a deadline for a satisfactory response.

11. The timelines for objections and resolving objections are obviously tight. Therefore, it is imperative that parties attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of any requests and responses.

12. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause explaining why the request was not submitted within the time period allowed.

13. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof.

14. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. *See* ARM 38.2.3301 through 38.2.3305.

#### Testimony and Evidence

15. The PSC contemplates a complete identification of issues before the hearing. In this case, identification of issues should be in the form of a "matrix of issues filed" as indicated in Attachment "A." The Commission anticipates that the "matrix" will be filed jointly by Ronan, Blackfoot and MWI. The PSC will closely scrutinize new issues or data in new areas introduced at the time of hearing, and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

16. At hearing, the PSC will admit into the record all prefiled direct and answer testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. This testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and prefiled written testimony shall be marked for the purpose of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document not previously filed with the Commission, copies of the document will be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter. Copies of data responses to be introduced into the record do not have to be made available at the hearing for Commissioners, Commission staff and other parties, except when there is an objection to introduction indicated in the prehearing memorandum.

19. Parties may be permitted to present live rebuttal testimony only by leave of the PSC or presiding officer.

20. The Montana Rules of Evidence in effect at the time of the hearing will apply.

21. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, *see* Rule 32, M.R.Civ.P. regarding admission of depositions).

#### Prehearing Motions and Conferences

22. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

23. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, distribution and marking of written testimony and exhibits prior to the hearing, and other procedural matters as may aid in the disposition of the proceeding.

23. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of Ronan Telephone Company and other regulated utilities at any time.

#### Prehearing Memoranda

24. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this Docket on or before March 15, 2000, containing the following information:

- a. Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;

- b. The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c. The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memoranda:

- d. Witnesses the party will call to testify;
- e. A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- f. A proposed order of cross-examination; and
- g. Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Objection to the Introduction of Evidence

25. By March 23, 2000 each party shall file any objections to the introduction of evidence listed in the prehearing memoranda. Objections must be accompanied by a short supporting argument. By March 28, 2000 responses to objections may be filed.

Amendment

26. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

DONE AND DATED this 20th day of December, 1999 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman  
NANCY MCCAFFREE, Vice Chair  
BOB ANDERSON, Commissioner  
GARY FELAND, Commissioner  
BOB ROWE, Commissioner

ATTACHMENT □A□

Procedural Schedule

Docket No. D99.4.112, Order No. 6218

Docket No. D99.4.113, Order No. 6219

Deadline\*

Action

January 3, 2000	Preliminary Motions Filed
January 7, 2000	Matrix of Issues Filed
January 21, 2000	Prefiled Testimony by all parties
February 9, 2000	Discovery on Prefiled Testimony
February 25, 2000	Answers to Discovery
March 10, 2000	Answer Testimony
March 15, 2000	Prehearing Memoranda; Prehearing Motions
March 23, 2000	Objections to Introduction of Evidence
March 28, 2000	Responses to Objections
April 5, 2000	Hearing begins
May 1, 2000	Arbitration Order Issues

\*All deadlines are receipt dates.